



# Public Notice

U.S. Army Corps of Engineers, Norfolk District

May 19, 2005

CENAO-TS-G  
05-V0977-14

## FEDERAL PUBLIC NOTICE

The District Engineer and the Virginia Department of Environmental Quality have received a joint application for Federal and State permits as described below:

### APPLICANT

Virginia Institute of Marine Science  
Eastern Shore Laboratory  
P.O. Box 350  
Wachapreague, VA 23480

WATERWAY AND LOCATION OF THE PROPOSED WORK: The project is located at two sites in Virginia, in Gloucester and Accomack County. One site is located in the waters of the York River, a tributary to the Chesapeake Bay and the other site is located in the waters of the Machipongo River, a tributary of Hogg Island Bay. A separate permit request is being reviewed by the Baltimore District Corps of Engineers for two project sites in Maryland.

Each site will have eight 10'x10'x2' galvanized steel cages containing varying amounts of triploid (sterile) *C. ariakensis* and *C. virginica*. All oysters will be deployed as spat-on-shell in plastic trays that sit in the secured cages. Approximately 21,500 triploid *C. ariakensis* will be deployed in Virginia waters. Cages will be in the water for 30 months.

PROPOSED WORK AND PURPOSE: The applicant proposes to undertake scientific studies to provide a better understanding of how *C. ariakensis* will grow and survive in bottom environments of the Chesapeake Bay and coastal embayments. In addition, the study will characterize the utilization by estuarine organisms of habitat created by *C. ariakensis* compared with habitat created by *C. virginica*.

In addition to the required Department of the Army permit, the applicant must obtain a Virginia Water Protection Permit/401 certification from the Virginia Department of Environmental Quality assuring that applicable laws and regulations pertaining to water quality are not violated. Project drawings are attached.

AUTHORITY: Permits are required pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403), Sections 401 and 404 of the Clean Water Act (Public Law 95-217) and Title 62.1 of the Code of Virginia.

FEDERAL EVALUATION OF APPLICATION: The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. The decision will reflect the national concern for both protection and utilization of important resources. The benefits which reasonably may be expected from the proposal must be balanced against its reasonably foreseeable detriments. All of the proposal's

relevant factors will be considered, including conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, flood plain values, land use classification, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, consideration of property ownership and, in general, the needs and welfare of the people. The Environmental Protection Agency's "Guidelines for Specification of Disposal Sites for Dredged or Fill Material" will also be applied (Section 404(b)(1) of the Clean Water Act).

The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the individual and cumulative impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity. Anyone may request a public hearing to consider this permit application by writing to the District Engineer within 30 days of the date of this notice, stating specific reasons for holding the public hearing. The District Engineer will then decide if a hearing should be held.

Preliminary review indicates that: (1) no environmental impact statement will be required; (2) no species of fish, wildlife, or plant (or their critical habitat) listed as endangered or threatened under the Endangered Species Act of 1973 (PL 93-205) will be affected; and (3) no known properties eligible for inclusion or included in the National Register of Historic Places are in or near the permit area, or would likely be affected by the proposal. Additional information might change any of these findings. For compliance with the Coastal Zone Management Act of 1972, as amended, the applicant must certify that federally licensed or permitted activities affecting Virginia's coastal zone (Tidewater) will be conducted in a manner consistent with the Virginia Coastal Resources Management Program (VCP). For more information or to obtain a list of the enforceable programs of the VCP, contact the Department of Environmental Quality, Office of Environmental Impact Review at (804) 698-4330 or e-mail: [elirons@deq.state.va.us](mailto:elirons@deq.state.va.us).

The Magnuson-Stevens Fishery Conservation and Management Act, as amended by the Sustainable Fisheries Act of 1996 (Public Law 104-267), requires all Federal agencies to consult with the National Marine Fisheries Service on all actions, or proposed actions, permitted, funded, or undertaken by the agency, that may adversely affect Essential Fish Habitat (EFH). The York and Machipongo Rivers contain Essential Fish Habitat (EFH) for species managed under a Federal Fishery Management Plan. The following is a list of species that may be affected, tiger, scalloped hammerhead, sandbar, Atlantic sharpnose, dusky, and sand tiger shark, red drum, cobia, Spanish and king mackerel, long finned squid, black sea bass, scup, windowpane and summer flounder, whiting, butterfish, and bluefish. The habitat, which the structures may affect, consists of shallow waters and intertidal flats. The proposed project is described in Proposed Work and Purpose, above. Our assessment of the project leads us to a preliminary determination that it will not have a substantial adverse effect on EFH and therefore expanded EFH consultation is not required. Based on comments from the National Marine Fisheries Service in response to this public notice, further EFH consultation may be necessary.

COMMENT PERIOD: Comments on this project should be made in writing, addressed to the Norfolk District, Corps of Engineers (ATTN: CENAO-TS-G), 803 Front Street, Norfolk,

Virginia 23510-1096, and should be received by the close of business **June 27, 2005**.

If you have any questions about this project or the permit process, please call:  
Peter Kube at 757 201-7504.

FOR THE DISTRICT ENGINEER:

Michael A. Schwinn  
Chief, Western Virginia  
Regulatory Section

Attachment: Drawings







